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Supreme Court of the United States.

OCTOBER TERM, ~~1944~~ ~~1945~~ 58

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6 No. ~~12~~ ORIGINAL.
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UNITED STATES OF AMERICA, PLAINTIFF,
v.
STATE OF CALIFORNIA, DEFENDANT.

Motion for Leave to Intervene.

The Commonwealth of Massachusetts, by its Attorney General, asks leave of the Court to intervene in the above-entitled complaint.

CLARENCE A. BARNES,
Attorney General,
J. J. SPIEGEL,
Assistant Attorney General,
GEORGE P. DRURY,
Assistant Attorney General.

Statement in Support of Motion.

The territorial boundaries of the Commonwealth of Massachusetts extend one marine length from its seashore at extreme low water mark. If an inlet or arm of the sea does not exceed two marine leagues in width between its headlands, a straight line from one headland to the other is equivalent to the shore line.

Dunham v. *Lamphere,* 3 Gray (Mass.) 268, 270.
United States v. *Bevans,* 3 Wheat. 336.
St. 1859, Massachusetts, c. 289.
Gen. Sts., Massachusetts, c. 1, § 1.
Pub. Sts., Massachusetts, c. 1, § 1.
Revised Laws, Massachusetts, c. 1, § 1.
Gen. Laws, Massachusetts, c. 1, § 3.

Massachusetts was one of the thirteen original colonies and it succeeded to the rights of the crown of England, with the same territorial limits, which have always included the ocean within one marine league. Its rights have been established by many decisions of the Supreme Court of the United States and of the Supreme Judicial Court of Massachusetts.

It makes no difference whether the body of water under consideration is a bay, however large, the entrance of which is between headlands less than two marine leagues apart, as in *Commonwealth* v. *Manchester,* 152 Mass. 230, or the open sea within one marine league from shore, as in *Dunham* v. *Lamphere,* 3 Gray, 368. The law, as stated above, has frequently been recognized by the administrative departments of the United States, as well as its Courts.

Massachusetts does not own the lands between high and low water mark, except in the case of flats extending more than one hundred rods from ordinary high water mark, as

they were granted to the owners of the shore by a Colonial Ordinance in 1647:

East Boston Co. v. *Commonwealth,* 203 Mass. 68, 72.
Wonson v. *Wonson,* 14 Allen (Mass.) 71, 82.

All land under navigable water within one marine league, *i.e.*, three nautical miles, from shore belongs to the State.

Manchester v. *Massachusetts,* 139 U.S. 240, 257.
Commonwealth v. *Manchester,* 152 Mass. 230.
Smith v. *Maryland,* 18 How. 71, 74.
Pollard v. *Hagan,* 3 How. 212, 230.
Martin v. *Waddell,* 16 Pet. 367, 410.

The same boundary principle applies to all States admitted after the thirteen original States ratified the Constitution, upon the same terms and conditions as those original states.

Pollard v. *Hagan,* 3 How. 212.
Goodtitle v. *Kibbe,* 9 How. 471.
Weber v. *Harbor Commissioners,* 18 Wall. 57.
Shively v. *Bowlby,* 152 U.S. 1.

Therefore, a decision against the State of California in the pending cause would cast great doubt upon the rights of the Commonwealth of Massachusetts, and justice and law require that this Commonwealth be permitted to intervene to protect its rights. Accordingly this Commonwealth desires an opportunity to deny and controvert the allegations of the petition and to meet the claims made in behalf of the United States by paragraphs II and VII thereof.

The Commonwealth of Massachusetts further suggests that the reservation of rights, as suggested in the note following the statement in support of motion for leave to file complaint made by the Attorney General of the United States, might invite further litigation, and that intervention by this Commonwealth at this time will tend to avoid further litigation.

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